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OFFICE OF THE SECRETARY



Personal
Communications
Industry
Association

Magalie Roman Salas, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TWA-325
Washington, DC 20554

RE: *In Re Conditions Proposed by SBC Communications Inc. And Ameritech Corporation for Their Pending Application to Transfer Control*
(CC Docket No. 98-41)

98-141

Dear Ms. Salas:

As a follow up to my August 11, 1999 meeting with Bill Dever and Tom Krattenmaker of the Common Carrier Bureau, I have attached a proposal of the Personal Communications Industry Association ("PCIA") with regard to the above-referenced proceeding. Specifically, PCIA is proposing revisions to paragraphs 50 through 52 of the conditions governing interconnection agreements.

Under separate cover, Paging Network Inc. ("PageNet") is submitting proposed additional conditions which address the unique situation that has been created by the refusal of SBC to recognize and honor the entitlements of paging carriers to compensation and relief from certain facilities charges under the statute and governing rules. The concerns addressed by the PageNet filing are consistent with concerns that PCIA has expressed in Commission filings made related to LEC-CMRS interconnection.

Attachment A is PCIA-proposed changes to the SBC-Ameritech merger conditions with new language and accompanying explanatory notes in bold font. Attachment B is an unmarked version of the very same PCIA-proposed changes to the SBC-Ameritech merger conditions.

PCIA urges the Commission, if it approves the merger subject to conditions, to make clear that the Commission action is not intended and shall not be construed to relieve the

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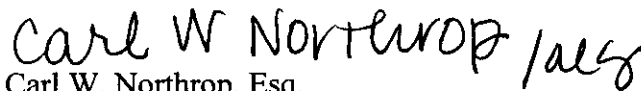
merged entity of any obligations it would have under the statute or applicable rules in the absence of the conditions. We note that in many instances the proposed conditions resolve open issues under the Act and the rules in the ILECs' favor. Approval of the conditions should not be deemed to excuse SBC-Ameritech from complying with more stringent requirements that might otherwise apply under the statutory and regulatory scheme. Put another way, the conditions should be clearly identified by the Commission as additional obligations of SBC-Ameritech, not as substitute for obligations that exist under the statute and rules, as presently construed or as construed in the future.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this letter and attached proposal for the referenced docket are hereby filed with the Secretary's office. I am also sending copies to the parties listed below. Please refer questions in connection with this matter to me at 703-535-7487.

Respectfully submitted,



Angela E. Giancarlo, Esq.
Director, Federal Regulatory Affairs
Personal Communications Industry Association



Carl W. Northrop, Esq.
Paul Hastings Janofsky & Walker LLP
Counsel to the Personal Communications Industry Association

cc: Bob Atkinson
Michelle Carey
William Dever
Thomas Krattenmaker

ATTACHMENT A

PCIA-Proposed Changes To the SBC/Ameritech Merger Conditions
(New Language in Bold With Explanatory Notes)

XII. Alternative Dispute Resolution

50. In each SBC and Ameritech State, SBC/Ameritech shall implement, subject to ~~the~~ **any**¹ appropriate state commission's approval and participation, an alternative dispute resolution ("ADR") process to resolve carrier-to-carrier disputes, including disputes related to existing and effective interconnection agreements, as described in Attachment E. The ADR process established by this Section is not intended and shall not be used as a substitute for resolving disputes regarding the negotiation of interconnection agreements under Sections 251 and 252 **or Section 332**² of the Communications Act. The ADR process shall be utilized to resolve interconnection agreement disputes between SBC/Ameritech and the ~~CLEC~~ **interconnecting telecommunications carrier**, at the ~~CLEC's~~ **interconnecting telecommunications carrier's**³ request.

XIII. Most-Favored-Nation Provisions for Out-of-Region Arrangements

¹**Explanatory Note: The condition should not presuppose that state approval is necessary.**

²**Explanatory Note: Jurisdiction over CMRS interconnection arises not only under Sections 251 and 252, but also under Section 332. The SBC/Ameritech conditions should not exclude interconnection agreements arising under Section 332.**

³**Explanatory Note: The condition should not discriminate in favor of CLECs; all interconnecting telecommunications carriers should be accorded the same protection.**

51. Out-of-Region-Agreements. If ~~a CLEC~~ an affiliate⁴ of SBC/Ameritech obtains any interconnection arrangement or UNE from an incumbent LEC through **negotiation, mediation or**⁵ arbitration initiated by ~~the SBC/Ameritech out-of-region CLEC~~⁶ under 47 U.S.C. § 252 that had not previously been made available to any other CLEC by that incumbent LEC,⁷ then SBC/Ameritech's incumbent LECs shall make available to requesting ~~CLECs~~ **telecommunication carriers**⁸ in their service areas, ~~through in good-faith negotiation,~~⁹ the same interconnection arrangement or UNE on the same terms (exclusive of price). SBC/Ameritech shall not be obligated to provide pursuant to this condition any interconnection arrangement or UNE unless it is **technically** feasible to provide ~~given the technical, network and OSS attributes~~

⁴Explanatory Note: The condition should apply to any affiliate of SBC/Ameritech that secures a favorable rate, not just a CLEC affiliate.

⁵Explanatory Note: Limiting the condition to voluntary agreements would create perverse disincentives for the affiliate to reach such an agreement.

⁶Explanatory Note: The entitlement should not hinge upon the issue of who initiated the arbitration.

⁷Explanatory Note: Superfluous language.

⁸Explanatory Note: The condition should not discriminate in favor of CLECs; all interconnecting telecommunications carriers should be accorded the same protection.

⁹Explanatory Note: The statutory scheme distinguishes between agreements that are arrived at through "Voluntary Negotiation" under Section 252(a) and those that are "provided" under Section 252(i). This distinction is important because of court rulings that confirm that an agreement adopted pursuant to the "most-favored-nation" provisions of Section 2529(i) is not subject to the 135 to 160 day negotiation window set forth in the Act, and disputes arising under Section 252(i) are immediately reviewable in Federal Court. Based upon the important legal distinctions between negotiated agreements and adopted agreements, the condition should not refer to SBC/Ameritech making an agreement available "through good faith negotiations".

~~and limitations in do so~~¹⁰, and is consistent with the laws and regulatory requirements of, the state for which the request is made. The price(s) for such interconnection arrangement or UNE shall be **state-specific based upon the price paid to or by SBC/Ameritech or their affiliates in the state for like traffic, facilities or elements as established in any applicable generic cost proceeding or, in the absence of such proceeding, the prevailing rate in state commission approved agreements.** ~~negotiated on a state-specific basis and, if such negotiations do not result in agreement, SBC/Ameritech's incumbent LEC shall submit the pricing dispute(s), exclusive of the related terms and conditions required to be provided under this Section XIII, to the applicable state commission for resolution under 47 U.S.C. § 252 to the extent applicable~~¹¹

52. In-Region Agreements. Subject to the conditions specified in this paragraph, SBC/Ameritech shall make available to any requesting telecommunications carrier in any SBC/Ameritech State any interconnection arrangement or UNE in any other SBC/Ameritech State that was voluntarily /negotiated by, **mediated or arbitrated with**¹² SBC or any **affiliate of SBC or Ameritech**¹³ ~~that has been is being~~ made available under an agreement to

¹⁰Explanatory Note: Technical feasibility is the appropriate standard under the FCC Rules. See, e.g. 47 C.F.R Section 51.809(b)(2).

¹¹Explanatory Note: Allowing SBC/Ameritech to force a requesting telecommunications carrier to arbitration on price in each separate state would totally gut the benefit of the proposed condition. Instead, default rates should be automatically available on a state specific basis based upon the prevailing rate paid to SBC/Ameritech in the state for like traffic, facilities or elements.

¹²Explanatory Note: Limiting the condition to voluntary agreements would create perverse disincentives for the affiliate to reach such an agreement.

¹³Explanatory Note: Whether a particular agreement was entered into by SBC or Ameritech is irrelevant. The concern posed by the merger is that the merged company will favor the most onerous pre-existing agreements rather than the most favorable pre-existing agreements. The condition should require them to make the more favorable agreements available throughout the combined service

(continued...)

which SBC/Ameritech is a party ~~and that has been approved~~¹⁴ after the Merger Closing Date under 47 U.S.C. § 252. Exclusive of price and subject to the conditions specified in this paragraph, such interconnection arrangement or UNE shall be made available to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i), provided that the interconnection arrangement or UNE shall not, **unless otherwise required by the standards of Section 252(i) or the FCC's rules,**¹⁵ be available beyond the last date that is available in the underlying agreement and that the requesting carrier accepts all reasonably related terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement. ~~This Section shall not impose any obligation on SBC/Ameritech to make available to a requesting telecommunications carrier any terms for interconnection arrangements or UNEs that incorporate a determination reached in an arbitration conducted in the relevant state under 47 U.S.C. § 252.~~¹⁶ The price(s) for such interconnection arrangement or UNE shall be established on a state-specific basis **based upon the price paid to or by SBC/Ameritech in the state for like traffic, facilities or elements as established in any applicable generic cost proceeding or, in the absence of such proceeding, the prevailing rate in state commission approved agreements.** ~~pursuant to 47 U.S.C. § 252 to~~

¹³(...continued)

territory.

¹⁴Explanatory Note: Whether a particular agreement was approved before or after the Merger Closing Date is irrelevant. The concern posed by the merger is that the merged company will favor the most onerous pre-existing agreements rather than the most favorable pre-existing agreements. The condition should require them to make the more favorable agreements available throughout the combined service territory.

¹⁵Explanatory Note: The question of whether the term of an agreement adopted pursuant to Section 252(i) may extend beyond that in the base agreement is an open issue and should not be resolved adverse to requesting carriers in the SBC/Ameritech conditions.

¹⁶Explanatory Note: Limiting the condition to voluntary agreements would create perverse disincentives for the affiliate to reach such an agreement.

~~the extent applicable.~~¹⁷ SBC/Ameritech shall not be obligated to provide pursuant to this condition any interconnection arrangement or UNE unless it is **technically** feasible to **do so**, ~~given the technical, network and OSS attributes and limitations in~~¹⁸ and is consistent with the laws and regulatory requirements of, the state for which the request is made.

¹⁷**Explanatory Note: Allowing SBC/Ameritech to force a requesting telecommunications carrier to arbitration on price in each separate state would totally gut the benefit of the proposed condition. Instead, default rates should be automatically available on a state specific basis based upon the prevailing rate paid to SBC/Ameritech in the state for like traffic, facilities or elements.**

¹⁸**Explanatory Note: Technical feasibility is the appropriate standard under the FCC Rules. See, e.g. 47 C.F.R Section 51.809(b)(2).**

ATTACHMENT B

**PCIA-Proposed Changes to the
SBC/Ameritech Merger Conditions
(Unmarked Version)**

XII. Alternative Dispute Resolution

50. In each SBC and Ameritech State, SBC/Ameritech shall implement, subject to any appropriate state commission's approval and participation, an alternative dispute resolution ("ADR") process to resolve carrier-to-carrier disputes, including disputes related to existing and effective interconnection agreements, as described in Attachment E. The ADR process established by this Section is not intended and shall not be used as a substitute for resolving disputes regarding the negotiation of interconnection agreements under Sections 251 and 252 or Section 332 of the Communications Act. The ADR process shall be utilized to resolve interconnection agreement disputes between SBC/Ameritech and the interconnecting telecommunications carrier, at the interconnecting telecommunications carrier's request.

XIII. Most-Favored-Nation Provisions for Out-of-Region Arrangements

51. Out-of-Region-Agreements. If an affiliate of SBC/Ameritech obtains any interconnection arrangement or UNE from an incumbent LEC through negotiation, mediation or arbitration under 47 U.S.C. § 252, then SBC/Ameritech's incumbent LECs shall make available to requesting telecommunication carriers in their service areas, in good-faith the same interconnection arrangement or UNE on the same terms (exclusive of price). SBC/Ameritech shall not be obligated to provide pursuant to this condition any interconnection arrangement or UNE unless it is technically feasible to do so, and is consistent with the laws and regulatory requirements of, the state for which the request is made. The price(s) for such interconnection arrangement or UNE shall be state-specific based upon the price paid to or by SBC/Ameritech or their affiliates in the state for like traffic, facilities or elements as established in any applicable generic cost proceeding or, in the

absence of such proceeding, the prevailing rate in state commission approved agreements.

52. In-Region Agreements. Subject to the conditions specified in this paragraph, SBC/Ameritech shall make available to any requesting telecommunications carrier in any SBC/Ameritech State any interconnection arrangement or UNE in any other SBC/Ameritech State that was voluntarily negotiated, mediated or arbitrated with SBC or any affiliate of SBC or Ameritech that is being made available under an agreement to which SBC/Ameritech is a party after the Merger Closing Date under 47 U.S.C. § 252. Exclusive of price and subject to the conditions specified in this paragraph, such interconnection arrangement or UNE shall be made available to the same extent and under the same rules that would apply to a request under 47 U.S.C. § 252(i), provided that the interconnection arrangement or UNE shall not, unless otherwise required by the standards of Section 252(i) or the FCC rules, be available beyond the last date that is available in the underlying agreement and that the requesting carrier accepts all reasonably related terms and conditions as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement. The price(s) for such interconnection arrangement or UNE shall be established on a state-specific basis based upon the price paid to or by SBC/Ameritech in the state for like traffic, facilities or elements as established in any applicable generic cost proceeding or, in the absence of such proceeding, the prevailing rate in state commission approved agreements. SBC/Ameritech shall not be obligated to provide pursuant to this condition any interconnection arrangement or UNE unless it is technically feasible to do so, and is consistent with the laws and regulatory requirements of, the state for which the request is made.